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BRIEF OF PLAINTIFF IN ERROR.

Filed [illegible], 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

THE COMMERCIAL NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

ALMA D. CHAMBERS, AS TREASURER OF WEBER COUNTY, UTAH.

IN ERROR TO THE SUPREME COURT OF THE [illegible] STATE OF UTAH.

FILED [illegible], 1900.

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COMMERCIAL NATIONAL BANK,
Plaintiff in Error,

vs.

ALMA D. CHAMBERS AS TREASURER OF WEBER COUNTY.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This action was brought by plaintiff in error hereinafter called Bank, to restrain the collection of the illegal portion of the taxes levied against its shareholders for the year 1898.

The case involves simply the carrying out of the statute law of deductions (not the construction) enacted in conformance with Sec. 5219 R. S. U. S., and the decisions of the Supreme Court of the United States thereon. It being insisted that the record easily shows that by the action of the taxing officer and the supreme court of Utah the shareholders of the Bank were treated contrary to the provisions of Sec. 5219 R. S. U. S., and further, that they were denied the

equal protection of the laws. The sections of the Revised Statutes of Utah applicable are as follows:

> "**Section 2506, Rev. St.**, requires all property to be 'assessed at its full value,' agreeably to Section 2 of the constitution."
>
> "**Section 2507, Id.**, reads: 'The stockholders in every bank or banking association organized under the authority of this state or of the United States, must be assessed and taxed on the value of their shares of stock therein, in the county, town, city or district where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such place or not. To aid the assessor in determining the value of such shares of stock, the cashier or other accounting officer of every such bank must furnish a verified statement to the assessor showing the amount and number of shares of the capital stock of each bank, the amount of its surplus or reserve fund or undivided profits, amount of investments in real estate, which real estate must be assessed to said bank and taxed as other real estate, and the names and places of residence of its stockholders, together with the number of shares held by each."
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> **2508, Id. Deductions.** "In the assessment of the shares of stock mentioned in the next preceding section, each stockholder must be allowed all the deductions and exemptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this state, and the assessment and taxation must not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state." ['96, p. 426.
>
> **2509, Id.** In making such assessment, there must also be deducted from the value of such shares, such sum as is in the same proportion to

such value as the assessed value of the real estate of such bank or banking asociation in which such shares are held, bears to the whole amount of the capital stock, surplus, reserve, and undivided profits of suchbank or banking association. ['96, pp. 426-7.

2518. What debts deductible from credits. In making up the amount of credits which any person is required to list he will be entitled to deduct from the gross amount of such credits the amount of all bona fide debts owing by him, but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, must be considered a debt within the intent of this section; and no person is entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of any unpaid subscription to any institution or society, nor on account of a subscription to or instalment payable on, the capital stock of any company or corporation; and no liability of any person or persons, company or corporation, as surety for another must be deducted; and no other liability of any person or persons, company or corporation, on any bond or undertaking must be deducted; and no deduction must be made in any case unless the party claiming such deduction discloses to the assessor, under oath, the name or names of the persons to whom such party is indebted, and the amount of such indebtedness to each, and also that such indebtedness is not barred by the statute of limitations, or, in case such indebtedness is so barred, acknowledges such indebtedness in writing, duly subscribed. No debt is to be deducted unless the statement shows the amount of such debt, as stated under oath in the aggregate. Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation,

another member of the firm or another officer need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included. The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise does not relieve the property from taxation. ['96, pp. 425-6, 430.

A deduction of debts from credits may be authorized, Con. art. 13, sec 3.

The portions of the constitution applicable are as follows:

Article XIII, Sec. 2. [What property taxable. Definitions. Revenue.] All property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The word property, as used in this article, is hereby declared to include monies, credits, bonds, stocks, franchises, and all matters and things (real, personal and mixed) capable of private ownership; but this shall not be so construed as to authorize the taxation of the stocks of any company or corporation, when the property of such company or corporation represented by such stocks, has been taxed. The legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. For the purpose of paying the state debt, if any there be, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest, and principal of such debt, within twenty years from the final passage of the law creating the debt.

Sec. 3. [Legislature to provide uniform tax. Exemptions.] The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to

its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property; so that every person and corporation shall pay a tax in proportion to the value of his, her or its property: *Provided, That a deduction of debts from credits may be authorized.*

The law enacted by congress in point is found in

Section 5219 of the Revised Statutes of the United States, which reads as follows: "Nothing herein shall prevent all the shares from any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

The bank, as required by Sec. 2507 above, furnished the tax assessor with a verified statement to aid him in determining the value of its shares of stock, which statement was accepted by the assessor (Record p. 9). The bank also furnished him a list of its real estate, which latter included some owned in California and Idaho of assessed value of $19,000.

The assessor in making the assessment deducted from the assessed value of the shares ($80) the assessed value of the real estate in Weber County, Utah, but refused to deduct for

that situate in California and Idaho (Findings 7 and 8, Rec. p. 10). He also deducted the bona fide debts of local shareholders, but refused such deductions to Edw. Conant and H. O. Harkness on the ground that being non-residents they were not entitled thereto.

Whereupon the bank made application to the Board of Equalization (Rec. p. 11) to have these additional deductions made. Upon their refusal the bank, at the proper time, paid the tax upon the real estate and tendered the amount that would be due from the shareholders provided these deductions were made (Findings 14 and 15, Rec. p. 13). The tender being rejected, the bank brought this action, claiming the deductions granted by Sections 2508 and 2509 and obtained an injunction against the levy and sale.

The trial court, following the statute, made a decree in favor of plaintiff bank. The Supreme Court reversed that decision, whereupon the bank brings to this court by writ of error.

II.

The errors relied upon are set out in a word under the argument, coming, however, within the specifications:

That by the action of the taxing officer and the Supreme Court of Utah "that the shareholders of the bank, in view of the express provisions of the Utah Statute, are by this decision taxed, contrary to the provisions of 5219 R. S. U. S., at a greater rate than other moneyed capital, and that thereby a discrimination has been worked against these shareholders in favor of other moneyed capital, and

2nd. That they (the shareholders) have been denied the equal protection of the laws (Rec. p. 31).

III.

ARGUMENT.

The issues presented are:

First—Are the non-resident shareholders entitled to the deductions set out in Section 2508?

Second—Should the assessed value of the California and Idaho real estate be deducted from the value of the shares? (See Sec. 2509 above).

There is no contention that the tax was not assessed nor that no statement was furnished the assessor as provided. (See opinion Rec. p. 21, opp. side p. 32).

The case at bar differs wholly from those heretofore decided by this court on these points, in that none of the states from which those cases came up had our Sec. 2508 or any of its provisions.

It has never been said by any court heretofore that national banks were not entitled to the protection of the state constitution and laws enacted thereunder in harmony with Sec. 5219 R. S. U. S.

Here, however, with the words of Sec. 2508:

> "Each stockholder *must be allowed* all the deductions and exemptions allowed by law in assessing the value of other taxable personal property *owned by individual citizens* of the state"

Before them, the court not only decides against the non-residents, but go beyond the issues and say that

No shareholder can have the deductions that are therein expressly granted. What are these deductions? Sec. 2518 contains them, being the only section on that subject.

If the words of the opinion found at the bottom p. 21 of

the record were intended to be a construction of Sec. 2508 then the following words taken from Thornley vs. United States, 113 U. S. on p. 313, can be appropriately quoted:

> "Where the meaning of the statute is plain, it is the duty of the courts to enforce it according to its obvious terms," citing several authorities.

So in this case; the section (2508) says the shareholders must have all the deductions allowed in assessing other taxable personal property owned by individual citizens. Sec. 2518 shows the deductions this individual citizen gets and the constitution itself shows that the word property includes this word "credits." See Art. XIII, Sec. 2, above. If credits be property it can need no construction to know that they are included in personal property mentioned in 2508. There is nothing to construe; nothing could be more obvious than the words used, nor in the light of our Constitution (passed May 8, 1895) and the history of the law as had been theretofore laid down by the courts, could there have been a more apt statute. A reference to the brackets at the end of the sections printed hereinbefore shows that they were taken from the laws of 1896. Down to that year the Supreme Court of the United States and a large majority of the courts of last resort of the several states, had declared that these deductions must be allowed to shareholders.

People vs. Weaver, 100 U. S., 539.
Watson vs. First National Bank, 107 Indiana, 206.
McAden vs. Commissioners Mecklenburg Co., 97 N. C., 355.

The two latter cases collate the authorities.

In enacting Sec. 2508 our legislature elected to codify the law as had been declared up to that year, thus making it certain and a positive authority to the assessor for the

future. The constitution especially permitted this. (See last line of Sec. 3, Art. XIII, quoted heretofore).

In not a state from which the contrary authorities are cited did they have this section; the only deduction allowed in the statutes of those states being for real estate. Nor did this section (2508) appear on the statute books of Utah prior to 1896. It was a new enactment entirely, being approved April 5th, 1896.

The motive for this law (2508) is easily ascertained by referring to the case of Bank vs. Ayers, found in 160 U. S., 660, decided on January 27, 1896. The concluding words of the opinion, which read as follows:

> "The single fact that the statute of Kansas permits some debts to be deducted from some moneyed capital but not from that invested in the shares of national banks, is not sufficient to show such violation"

Gave the legislature the cue and they thereupon enacted a new law wherein there was expressly and in words that are plain, granted to Bank shareholders all the deductions that individual citizens had.

The case of First Nat. Bank vs. Chapman, 173 U. S., 205, decided Feb. 27, 1899, quotes the Ohio tax revenue law showing that that state has no such section as our 2508.

Sec. 2509 (which is common to nearly all states) allowing deductions for real estate, is no clearer in language than 2508, and yet no court has ever thought it needed any construction, but all have applied it according to its terms.

It is respectfully urged that the action of the supreme court of Utah in denying these shareholders the deductions that are in no mistakeable terms granted in Sec. 2508 is not only obnoxious to Sec. 5219 R. S. U. S. but also is a denial to these shareholders of the equal protection of the laws.

These words from the opinion in ex-parte Commonwealth of Virginia, 100 U. S., 339, are here taken down, believing that they are authority herein:

> "We have said the prohibitions of the 14th amendment are addressed to the states. They are: 'No STATE shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States, * * * nor deny to any person within its jurisdiction the equal protection of the laws.' They have reference to the actions of the political body denominated a state, by whatever instruments or in whatever modes that action may be taken. A state acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state. This must be so, or the constitutional prohibition has no meaning."

The Utah legislature having so plainly shown what their purpose was by enacting Sec. 2508, the shareholders of plaintiff in error are entitled to the protection of its provisions.

In no manner can that section ever be used other than in the way claimed by these shareholders.

With the utmost respect but with earnestness it is submitted that the action of the supreme court of Utah is but an absolute refusal to recognize the law.

The Utah legislature say that these shares must be

assessed at their full cash value, (Sec. 2506) which was done, (See Finding 7, Rec. p. 10) and the information therefor fully furnished by the Bank. (Finding 3, p. 9).

That part of the law (Sec. 2506) having been enforced, as it should be, it is asked that Sec. 2508 be also given effect.

The lines of the opinion of the supreme court of Utah found at the bottom of p. 24 of the record, wherein it is said that counsel on neither side had pointed out any statutory provision for these deductions seems unaccountable.

A copy of respondent's brief (plaintiff in error here) in that court is filed herewith with the request that if it become material a reference be made to bottom p. 15 thereof, and also bottom p. 23, and indeed all the portion of that brief devoted to the merits. The statute was therein repeatedly called to the court's attention.

The other question was the claim for deductions for the assessed value of the real estate situate in California and Idaho.

The supposition in the opinion (l. c. p. 23 Rec.) "that three-fourths of the Bank's property might be in another state," for many and obvious reasons is not a supposable case. This real estate has to pay taxes where it is located and if included in the value paid on the stock would be of course double taxation. The opinion of the trial judge on that point is here inserted as fairly expressing the legal situation:

> JUDGE ROLAPP—"As to the other deduction claimed by the plaintiff, for the assessed value of real estate situate outside of the state of Utah, I am equally of the opinion that such deduction should be made. A stockholder in national banks can only be assessed for the market value of such stock. Abstractly speaking the stock has no value, but stands only as an equivalent for the value of the property of the corporation. If part of the property already

> pays tax, whether in this state or elsewhere, and the shares were again to be taxed for the value of the whole or a part of such property, clearly that would amount to double taxation, and would be invalid upon all principles of taxation."

If, then, the result be double taxation, the action of the supreme court of Utah cannot be claimed as a construction of any of her laws, but would be a decision contrary to the spirit of Sec. 5219 R. S. U. S. and to the provisions of our Sec. 2509.

As to the remedy: If these deductions should have, as we claim, been allowed, then to that extent the tax was illegal and the bank on paying the tax on the real estate and tendering the amount of the legal part of the tax on the shares, complied with Section 2683 of the statutes and became at once authorized to an injunction against this illegal excess, and indeed this was the appropriate mode of relief. (Sec. 2683, authorizes an injunction for the illegal portion of a tax.)

> See also Pelton vs Commercial National Bank, 11 Otto, 143.
> Cummings vs. Merchants' National Bank, 11 Otto, 153.

The stockholders refused to pay this illegal excess (see finding 12 A, Rec. p. 12) and had a right to.

> See Cummings vs. Bank, *supra*.

And this action was properly brought by the Bank for the stockholders.

> Cummings vs. Bank, *supra*.
> Hills vs. Nat. Ex. Bank, 15 Otto, 319.

It is respectfully urged that the supreme court of Utah should be reversed.

Respectfully submitted,

ABBOT R. HEYWOOD,

Attorney for Plaintiff in Error.